

Public Chapter 547

HOUSE BILL NO. 1986

By Representative Hargrove

Substituted for: Senate Bill No. 1993

By Senators Kyle, Person

AN ACT to amend Tennessee Code Annotated, Title 37, Chapter 1; Title 40, Chapter 14 and Title 40, Chapter 35, relative to court-appointed counsel.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-14-103, is amended by designating the current language as subsection "(a)" and by adding the following new language, to be designated as subsection "(b)":

(b)

(1) A defendant, who is provided with court-appointed counsel, shall be assessed by the court at the time of appointment a nonrefundable administrative fee in the amount of fifty dollars (\$50). The administrative fee shall be assessed only one time per case and shall be waived or reduced by the court upon a finding that the defendant lacks financial resources sufficient to pay the fee in such amount. The fee may be increased by the court to an amount not in excess of two hundred dollars (\$200) upon a finding that the defendant possesses sufficient financial resources to pay the fee in such increased amount. The administrative fee shall be payable, at the court's discretion, in a lump sum or in installments; provided, however, the fee shall be paid prior to disposition of the case or within two (2) weeks following appointment of counsel, whichever shall first occur. Prior to disposition of the case, the clerk of the court shall inform the judge whether the administrative fee assessed by the court has been collected. Failure to pay the administrative fee assessed by the court shall not reduce or in any way affect the rendering of services by court-appointed counsel; provided, however, the defendant's willful failure to pay such fee may be considered by the court as an enhancement factor when imposing sentence if the defendant is found guilty of criminal conduct.

(2) The administrative fee shall be separate from and in addition to any other contribution or recoupment assessed pursuant to law for defrayal of costs associated with the provision of court-appointed counsel. The clerk of the court shall retain a commission of five percent (5%) of each dollar of administrative fees collected and shall transmit the remaining ninety-five percent (95%) of each such dollar to the State Treasurer for deposit in the State's General Fund.

(3) If the administrative fee is not paid prior to disposition of the case, then the fee shall be collected in the same manner as costs are collected; provided, however, upon disposition of the case, moneys paid to the clerk, (including any cash bond posted by the defendant), shall be allocated to taxes, costs and fines and then to the administrative fee and any recoupment ordered. The administrative fee and any recoupment or contribution ordered for the services of court-appointed counsel shall apply and shall be collected even if the charges against the defendant are dismissed.

(4) As part of the clerk's regular monthly report, each clerk of court, who is responsible for collecting administrative fees pursuant to this section, shall file a report with the court and with the Director of the Tennessee Administrative Office of the Courts. The report shall indicate the following:

(A) Number of defendants for whom the court appointed counsel;

(B) Number of defendants for whom the court waived the administrative fee;

(C) Number of defendants from whom the clerk collected administrative fees;

(D) Total amount of commissions retained by the clerk from such administrative fees; and

(E) Total amount of administrative fees forwarded by the clerk to the State Treasurer.

SECTION 2. Tennessee Code Annotated, Section 37-1-126, is amended by adding the following language as a new, appropriately designated subsection:

( )

(1) A child, who is provided with court-appointed counsel pursuant to this section, shall be assessed by the court at the time of appointment a nonrefundable administrative fee in the amount of fifty dollars (\$50). The administrative fee shall be assessed only one time per case and shall be waived or reduced by the court upon a finding that the child and the child's parents or legal guardians lack financial resources sufficient to pay the fee in such amount. The fee may be increased by the court to an amount not in excess of two hundred dollars (\$200) upon a finding that the child or the child's parents or legal guardians possess sufficient financial resources to pay the fee in such increased amount. The administrative fee shall be payable, at the court's discretion, in a lump sum or in installments; provided, however, the fee shall be paid prior to disposition of the case or within two (2) weeks of appointment of counsel, whichever shall first occur. Prior to disposition of the case, the clerk of the court shall inform the judge whether the administrative fee has been collected. Failure to pay the administrative fee assessed by the court shall not reduce or in any way affect the rendering of services by court-appointed counsel; provided, however, willful failure to pay such fee may be weighed by the court when determining appropriate disposition of the child if the court finds that the child engaged in delinquent or unruly conduct and is, therefore, in need of treatment and/or rehabilitation.

(2) The administrative fee shall be separate from and in addition to any other contribution or recoupment assessed pursuant to law for defrayal of costs associated with the provision of court-appointed counsel. The clerk of the court shall retain a commission of five percent (5%) of each dollar of administrative fees collected and shall transmit the remaining ninety-five percent (95%) of each such dollar to the State Treasurer for deposit in the State's General Fund.

(3) If the administrative fee is not paid prior to disposition of the case, then the fee shall be collected in the same manner as costs are collected; provided, however, upon disposition of the case, moneys paid to the clerk, (including any cash bond posted by or on behalf of the child), shall be allocated to taxes, costs and fines and then to the administrative fee and any recoupment ordered. The administrative fee and any recoupment or contribution ordered for the services of court-appointed counsel shall apply and shall be collected even if the charges against the child are dismissed.

(4) As part of the clerk's regular monthly report, each clerk of court, who is responsible for collecting administrative fees pursuant to this section, shall file a report with the court and with the Director of the Tennessee Administrative Office of the Courts. The report shall indicate the following:

(A) Number of children for whom the court appointed counsel pursuant to this section;

(B) Number of children for whom the court waived the administrative fee;

(C) Number of children from, or on behalf of, whom the clerk collected administrative fees;

(D) Total amount of commissions retained by the clerk from such administrative fees; and

(E) Total amount of administrative fees forwarded by the clerk to the State Treasurer.

SECTION 3. Tennessee Code Annotated, Section 40-35-114, is amended by adding the following language as a new, appropriately numbered item:

( ) The defendant, who was provided with court-appointed counsel, willfully failed to pay the administrative fee assessed pursuant to § 40-14-103(b)(1).

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect July 1, 1997, the public welfare requiring it, and shall apply to appointment of counsel occurring on or after such date.